

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TODD WHEELER KELLER
Plaintiff,

17-CV-1224

v.

MARY C. LOEWENGUTH
PATRICK J. HEALY
ROBERT H. JACKSON
Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that defendants, by their attorney, Michael S. Cerrone, Assistant United States Attorney, for James P. Kennedy, Jr., United States Attorney for the Western District of New York, hereby moves this Court for an order: (i) pursuant to 28 U.S.C. § 2679, substituting the United States as the sole defendant with respect to any tort claims alleged by plaintiff; (ii) pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), dismissing plaintiff's complaint in its entirety; and (iii) for such other and further relief as the Court may deem just or proper. This motion is supported by the accompanying Memorandum of Law.

PLEASE TAKE NOTICE THAT the motion will be heard at the United States Courthouse, 2 Niagara Square, Buffalo, New York at a date and time to be set by the Court.

PLEASE TAKE FURTHER NOTICE that defendant intends to serve and file reply papers and, therefore, any papers in opposition to this motion are due fourteen days after service of this motion, pursuant to Local Rule 7(b)(2)(B), unless otherwise ordered by the Court.

DATED: Buffalo, New York, November 29, 2017

JAMES P. KENNEDY, JR.
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2017, I electronically filed the foregoing **NOTICE OF MOTION** with the Clerk of the District Court using its CM/ECF system.

I further certify that on November 29, 2017, I mailed the foregoing **NOTICE OF MOTION** by the United States Postal Service, to:

1. Todd Wheeler Keller
800 Exchange Street Road
Attica, New York 14011-9998

s/DIANE CARLSEN
Legal Assistant